IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID STEVENS,	§	
	§	
Defendant Below-Appellant,	§	No. 477, 2008
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID Nos. 0801023670 and
Plaintiff Below-Appellee.	§	0801024647
	§	

Submitted: April 7, 2009
Decided: May 11, 2009

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

O R D E R

This 11th day of May 2009, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, David Stevens (Stevens), pled guilty on May 29, 2008 to two counts of felony theft and three counts of second degree forgery. The Superior Court sentenced Stevens as a habitual offender to a total period of ten years at Level V incarceration, to be suspended after serving nine years in prison for probation. The Superior Court also discharged Stevens as unimproved from three unrelated prior terms of probation. This is Stevens' direct appeal.

(2) Stevens' counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Stevens' counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Stevens' attorney informed him of the provisions of Rule 26(c) and provided Stevens with a copy of the motion to withdraw and the accompanying brief. Stevens also was informed of his right to supplement his attorney's presentation. Stevens has raised four issues for this Court's consideration. The State has responded to Stevens' points, as well as to the position taken by Stevens' counsel, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[1]

[1] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) In his response to his counsel's Rule 26(c) brief, Stevens includes four numbered paragraphs, which assert: (i) it took the court 104 days to indict him; (ii) his attorney did not listen to him; (iii) the Superior Court failed to rule on his motion to withdraw his guilty plea; and (iv) the State added charges against him. We address these claims in order.

(5) Stevens' suggestion that he was not indicted in a timely way has no factual basis. Stevens' guilty plea was the result of two different sets of criminal charges. On the first set of charges, he was arrested on January 21, 2008 and indicted twenty-nine days later on February 19, 2008. On the second set of charges, he was arrested on March 25, 2008 and indicted twenty days later on April 14, 2008. Both sets of charges were resolved on May 29, 2008 when Stevens pled guilty. There is nothing in the record to support any suggestion that there was unnecessary delay in Stevens' case.[2] Moreover, Stevens' knowing and intelligent guilty plea waived any objection to alleged errors occurring prior to the entry of his plea.[3] Accordingly, we reject Stevens' first claim on appeal.

(6) Stevens next complains that his "lawyer was always fast to talk but slow to listen." Even if we construe this broadly as a claim for

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[2] *See Michaels v. State*, __ A.2d __, 2009 WL 684142 (Del. Mar. 17, 2009).

[3] *See Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

ineffective assistance of counsel, it is well established that this Court will not consider a claim of ineffective assistance of counsel for the first time on direct appeal.[4] Accordingly, we will not address this vague allegation here.

(7) Stevens next contends that the Superior Court erred by failing to rule on his motion to withdraw his guilty plea. We disagree. Stevens, through his counsel, entered a guilty plea in May 2008. On July 30, 2008, he filed a pro se request to withdraw his plea, even though he was still represented by counsel. The Superior Court continued his sentencing, which was scheduled for August 1, 2008, in order to give Stevens the opportunity to retain substitute counsel to file a motion to withdraw his plea. On the rescheduled sentencing date, September 5, 2008, Stevens appeared with his original counsel who indicated that he would not file a motion to withdraw the guilty plea because grounds did not exist to support such a motion. Stevens then requested another opportunity to obtain substitute counsel to help him. The Superior Court refused Stevens' request to continue the sentencing hearing again. The Superior Court's refusal to continue the proceedings under these circumstances so that Steven could file a proper

[4] *Collins v. State*, 420 A.2d 170, 177 (Del. 1980).

motion to withdraw was neither unreasonable nor capricious.[5] Accordingly, we find no merit to Stevens' argument on appeal.

(8) Finally, Stevens contends he was charged with two counts and then the State later added two more charges against him. There simply is no factual support for this contention. Moreover, even assuming this claim was supported by the record, Stevens' guilty plea waived any objection to defects in the indictment that occurred prior to the entry of his plea.[6]

(9) This Court has reviewed the record carefully and has concluded that Stevens' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Stevens' counsel has made a conscientious effort to examine the record and the law and has properly determined that Stevens could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[5] *See Riley v. State*, 496 A.2d 997, 1018 (Del. 1985).

[6] *Downer v. State*, 543 A.2d at 312-13.